

# Ordinance Fact Sheet

**TO:** City Council

**DATE:** January 24, 2005

**FROM:** City Attorney

**SUBJECT:** AN ORDINANCE OF THE CITY OF PASADENA AMENDING TITLE 8 OF THE PASADENA MUNICIPAL CODE BY ADDING CHAPTER 8.18 ESTABLISHING A DEEMED APPROVED STATUS FOR NONCONFORMING OFF SITE ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS

**TITLE OF PROPOSED ORDINANCE:**

AN ORDINANCE OF THE CITY OF PASADENA AMENDING TITLE 8 OF THE PASADENA MUNICIPAL CODE BY ADDING CHAPTER 8.18 ESTABLISHING A DEEMED APPROVED STATUS FOR NONCONFORMING OFF SITE ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS

**PURPOSE OF ORDINANCE:**

By amending the municipal code, the proposed ordinance will establish a deemed approved status for nonconforming alcoholic beverage sales establishments (those who are not subject to the City's conditional use permit requirements.) This ordinance will allow greater local control over those establishments which are not regulated by conditional use permits by requiring that they adhere to certain performance standards relating to operating as a public nuisance. If an establishment fails to adhere to these performance standards the City will be able to impose additional conditions. If the establishment, thereafter, continues to operate as a public nuisance, their deemed approved status could be revoked which could result in the closing of the establishment. The process currently set forth in Section 14.50.060 of the Pasadena Municipal Code relating to the abatement of nuisances, will provide the mechanism to enforce this proposed ordinance and would make the Code Enforcement Commission the final decision maker.

**BACKGROUND:**

At its meeting on September 13, 2004, the City Council adopted the recommendations of the Pasadena Nuisance Off-Premise Working Group and directed the City Attorney's Office to

prepare an ordinance to implement those recommendations regarding nonconforming alcoholic beverage sales establishments. In the interim City Staff has coordinated regarding the best means of implementation for Pasadena as reflected in the proposed ordinance. This ordinance is being referred to as the "deemed approved" ordinance and is modeled after the ordinance which has been successfully used in Oakland. This ordinance would apply to those retail liquor establishments which are not subject to conditional use permits and would impose performance standards which must be adhered to. Failure to adhere to these performance standards could result in the revocation of the establishment's deemed approved status and the possible closing of the business.

The proposed ordinance encompasses all off site retail liquor establishments. Using existing legislation (PMC Section 14.50.060) for nuisance abatement, the Building and Neighborhood Services Manager will be responsible for enforcement of this ordinance. The Code Enforcement Commission will be the final decision making body.

**REASON WHY LEGISLATION IS NEEDED:**

An ordinance is needed to amend the Pasadena Municipal Code.

**PROGRAM, DEPARTMENTS, OR GROUPS AFFECTED:**

The Police Department, the City Prosecutor's Office, the Code Enforcement Commission, the Planning Division and the Neighborhood Services Division will be affected by the proposed ordinance.

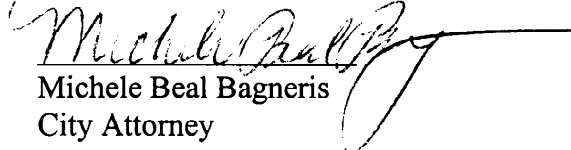
**FISCAL IMPACTS:**

The fiscal impacts would relate to enforcement costs.

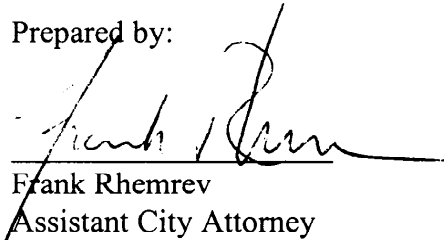
**POLICY CHANGES:**

The proposed ordinance provides a mechanism by which the City can regulate liquor establishments not subject to conditional use permits.

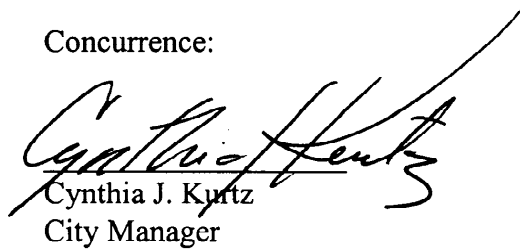
Respectfully Submitted,

  
Michele Beal Bagneris  
City Attorney

Prepared by:

  
Frank Rhemrev  
Assistant City Attorney

Concurrence:

  
Cynthia J. Kurtz  
City Manager

**ORDINANCE NO. \_\_\_\_\_****AN ORDINANCE OF THE CITY OF PASADENA AMENDING  
TITLE 8 OF THE PASADENA MUNICIPAL CODE BY ADDING CHAPTER 8.18  
ESTABLISHING A DEEMED APPROVED STATUS FOR NONCONFORMING  
OFF SITE ALCOHOLIC BEVERAGE RETAIL SALE ESTABLISHMENTS**

The People of the City of Pasadena ordain as follows:

**Section 1.** This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the Charter. The approved summary of this ordinance reads as follows:

**“SUMMARY**

The purpose of the chapter is to “deem approved” those off site liquor establishments which are not subject to a conditional use permit for alcohol sales by establishing performance standards for those retail liquor sales establishments which would prevent such establishments from being or becoming a public nuisance and requiring these establishments to adhere to those performance standards. Failure to adhere to these performance standards could result in the imposition of conditions and/or the revocation of their “deemed approved” status which could result in the termination of the use as a public nuisance.”

**Section 2.** Title 8 of the Pasadena Municipal Code is hereby amended by adding Chapter 8.18 which reads as follows:

**“Chapter 8.18  
Deemed Approved Alcoholic Beverage Retail Sale Ordinance**

**Sections:**

- 8.18.010 Title
- 8.18.020 Purposes of this Ordinance
- 8.18.030 Definitions
- 8.18.040 Applicability
- 8.18.050 Deemed Approved Compliance
- 8.18.060 Performance Standards
- 8.18.070 Notification to Owners
- 8.18.080 Performance Standards Compliance
- 8.18.090 Procedures for Referral to the Code Enforcement Commission
- 8.18.100 Hearing Procedures
- 8.18.110 Fee Schedule
- 8.18.120 Recovery of Costs
- 8.18.130 Authority to Enter and Inspect Deemed Approved Activity

### **8.18.010 Title**

The provisions of this Chapter shall be known as the ‘Deemed Approved Alcoholic Beverage Retail Sale Ordinance.’

### **8.18.020 Purposes of this Ordinance**

The City recognizes that the health, safety, comfort, convenience, prosperity, and general welfare of persons visiting, residing, working or conducting business in the City may be adversely impacted by Alcoholic Beverage Retail Sale establishments which are non conforming because they do not have a conditional use permit for alcohol sales. The purpose of this title is to set forth regulations and enforcement procedures that:

- A. Address community problems associated with the sale and/or consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior, and escalated noise levels;
- B. Provide opportunities for Alcoholic Beverage Retail Sales to be conducted in a mutually beneficial relationship to each other and to other commercial and civic services.
- C. Ensure that there is no degradation of the Deemed Approved Activities.
- D. Prevent such prohibited activities and activities contrary to Deemed Approved Activities from becoming public nuisances; and
- E. Ensure such adverse impacts are monitored, mitigated and/or controlled such that they do not negatively contribute to the change in character of the areas in which they are located.

### **8.18.030 Definitions**

- A. **Alcoholic Beverage.** Alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, which contains one-half of one percent or more of alcohol by volume and which is prepared for consumption either alone or when diluted, mixed, or combined with other substances, and sales of which require a State Department of Alcoholic Beverage Control license.
- B. **Alcoholic Beverage Retail Sales.** The retail sale of alcoholic beverages for off-premise consumption.
- C. **Condition of Approval.** A requirement that must be met in order for a Deemed Approved Activity to retain its Deemed Approved Status.
- D. **Deemed Approved Activity.** Any Alcohol Sales - Beer and Wine; Alcohol Sales – Full Alcohol Sales; Convenience Store; Drive-Through Business; Food Sales; and Liquor Stores that sell alcoholic beverages and are not subject to an alcohol conditional use permit per Title 17 of this code.

- E. **Deemed Approved Status.** A Deemed Approved Activity in full compliance with the performance standards as set forth in Section 8.18.060 and any imposed Conditions of Approval.
- F. **Illegal Activity.** Activity that has finally been determined to be in noncompliance with the Deemed Approved performance standards set forth in section 8.18.060. Such activity shall lose its Deemed Approved Status and shall no longer be considered a Deemed Approved Activity.
- G. **Performance Standards.** Requirements prescribed herein to ensure the operation of a Deemed Approved Activity is in accordance with the purposes of this chapter.
- H. **Premises.** The actual space within a building or any area on site, either directly or indirectly supporting alcoholic beverage sales.

#### **8.18.040 Applicability**

- A. The provisions of this chapter shall apply to all Deemed Approved Activities defined herein and which meet such definition as of the effective date of this ordinance.
- B. Whenever any provision of this chapter and any other provision of law, whether set forth in this Code, or in any other law, ordinance, or regulation of any kind, imposes overlapping or contradictory regulations, or contains restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in this chapter.

#### **8.18.050 Automatic Deemed Approved Status**

All Deemed Approved Activities as defined herein shall automatically become Deemed Approved Activities as of the effective date of the Deemed Approved Alcoholic Beverage Retail Sales regulations. Each such Deemed Approved Activity shall retain its Deemed Approved Status, as long as it complies with each of the performance standards set forth in Section 8.18.060.

#### **8.18.060 Performance Standards**

- A. Deemed Approved Activities must comply with the following Performance Standards:
  - 1. It shall not result in adverse effects to the health, welfare, peace, or safety of persons visiting, residing, working, or conducting business in the surrounding area.
  - 2. It shall not jeopardize or endanger the public health, welfare, or safety of persons visiting, residing, working, or conducting business in the surrounding area.

3. It shall not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood as a result of inadequate maintenance, prohibited activities, and/or operating characteristics.
4. It shall not result in nuisance activities, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, public consumption of alcoholic beverages, harassment of passers-by, gambling, prostitution, sale of stolen goods, public urination, theft, assault, battery, vandalism, littering, loitering, graffiti, illegal parking, loud noises (especially in the late night or early morning hours,) traffic violations, curfew violations, lewd conduct, or police detentions and arrests.
5. It shall not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute;

#### **8.18.070 Notification to Owners**

- A. Within thirty (30) days after the effective date of this ordinance, the Building and Neighborhood Services Manager (Administrator) shall send each Deemed Approved Activity business owner and the property owner if not the same, notice of the activity's Deemed Approved Status and the requirements of this chapter. The notice shall be sent by first-class mail, return receipt requested, and shall include the requirements set forth in this chapter specifically:
  1. A copy of the performance standards of Section 8.18.060;
  2. A statement requiring compliance with the performance standards;
  3. A statement informing the business owner that cost recovery fees associated with enforcement may be levied and;
  4. A statement informing the business owner that the performance standards must be posted for public review in a conspicuous and unobstructed place visible from the entrance of the establishment.

#### **8.18.080 Performance Standards Compliance**

This Section is not intended to restrict the powers and duties otherwise pertaining to other city officers or bodies, in the field of monitoring and ensuring the harmony of Alcoholic Beverage Retail Sales in the City.

- A. Owners or operators of Deemed Approved Activities are encouraged to contact the police to handle violations of the law. In order to encourage such calls, noncompliance with the

performance standards may not be based solely upon the number of service calls to the City made by the owner or operator of a Deemed Approved Activity.

- B. The Administrator has the authority to work with the owner or operator of the Deemed Approved Activity (Respondent) to resolve minor violations.
- C. If the Administrator determines that prohibited activities of other than a minor nature exist or were allowed to occur, then the Administrator shall refer the Deemed Approved Activity to a panel of the Code Enforcement Appeals Commission in accordance with Section 14.50.060.

#### **8.18.090 Procedures for Referral to the Code Enforcement Commission**

- A. Referral. The Administrator's referral shall be scheduled for a public hearing before a panel of the Code Enforcement Commission within thirty (30) days of the referral, unless both the Administrator and the Respondent consent to a later date.
- B. Purpose. The purpose of the public hearing is to hear testimony and receive evidence concerning the operating methods of the Deemed Approved Activity.
- C. Notification. Notification of the public hearing shall be pursuant to subsection 14.50.060(C). The operator, if different from the property owner of the Deemed Approved Activity shall be notified of the public hearing via first class mail, return receipt requested.

#### **8.18.100 Hearing Procedures**

- A. Hearing Procedures. The public hearing shall be conducted pursuant Section 14.50.060(D).
- B. The panel shall hear all relevant testimony and consider all relevant evidence, and shall find whether the Deemed Approved Activity is in compliance with the Deemed Approved Performance Standards set forth in Section 8.18.060 and any other applicable criteria.
  - 1. Subsequent to the presentation of relevant testimony and evidence, the panel may;
    - (a) uphold the Deemed Approved Status;
    - (b) impose, add or modify such reasonable Conditions of Approval as are in the judgment of the panel necessary to ensure conformity to said criteria;
    - (c) determine that the Deemed Approved Activity is an illegal activity as defined herein. Such finding shall result in the Deemed Approved Activity losing its Deemed Approved Status. Revocation of the Deemed Approved Status shall cause the Code Enforcement Appeals Commission to order immediate and permanent discontinuance of Alcoholic Beverage Sales as of the Effective Date of the decision. Such continuation shall remain in effect



absent future issuance of an Alcohol Sales Conditional Use Permit per Title 17.

2. Any new or modified conditions of approval required by the panel shall be made a part of the Deemed Approved Status, and the Deemed Approved Activity shall be required to comply with these conditions.
  3. Conditions of Approval and performance standards must be conspicuously displayed in the premises in an area viewed by the public.
- D. Effective date: The decision of the panel of the Code Enforcement Appeals Commission shall become final ten (10) calendar days after the date of decision unless appealed to the full Code Enforcement Appeals Commission in accordance with Sections 14.50.060 subsections F, G, and H of Chapter 14.

#### **8.18.110 Fee Schedule**

- A. Fees for review, notification, appeal, and re-inspection of Deemed Approved Activities shall be in accordance with the City general fee schedule.

#### **8.18.120 Recovery of Cost**

- A. In addition to the abatement proceedings set forth in section 14.50.060, violation of this Chapter may be subject to administrative cost pursuant to Section 1.30.030 of this Code.

#### **8.18.130 Authority to Enter and Inspect Deemed Approved Activity**

- A. Any city official or authorized representative charged with enforcement responsibilities under this municipal code, state laws or other authority, may enter and inspect any Deemed Approved Activity in the city whenever necessary to secure compliance with, or prevent violation of any provisions of this Chapter.
- B. A person authorized by this chapter to enter any Deemed Approved Activity may enter the Activity to inspect the same or perform any duty imposed by the municipal code or by state law, provided the owner or the lawful occupant has consented to the inspection.
- C. An owner, occupant or agent thereof who refuses to permit such entry and investigations shall be guilty of infringing upon the violations and penalties as outlined in Section 8.18.110 and subject to related penalties thereof.

**Section 2.** The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

**Section 3.** This ordinance shall take effect 30 days after its publication.

Signed and approved this \_\_\_\_ day of \_\_\_\_, 2005.

---

Bill Bogaard  
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held the 24<sup>th</sup> day of January, 2005, by the following vote.

Ayes:

Noes:

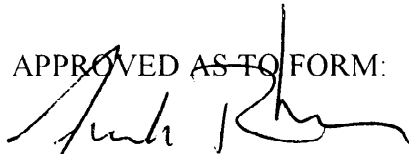
Absent:

Abstain:

Published:

Jane L. Rodriguez, CMC  
City Clerk

APPROVED AS TO FORM:



Frank L. Rhemrev  
Assistant City Attorney